

EXHIBIT “A”

Notice of Pendency and Consent to Join Form in English

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERTO MALDONADO, on behalf of himself
and all others similarly situated, and
HENRY CANALES, BAIRON REYES,
ROMEO JUAREZ, JORGE OSEGUEA,
MAURICIO A. MENDEZ, MARCIL MENDEZ,
and JOSE M. MARTINEZ, individually,

Plaintiffs,

-against-

FASCO ASPHALT PAVING, INC.,
CHRISTOPHER D'AGOSTINO, an individual, and
STEVE D'AGOSTINO, an individual,

Defendants.
-----X

11CV0640 (LDW)(WDW)

NOTICE OF PENDENCY

**IMPORTANT NOTICE
ADVISING YOU OF YOUR
LEGAL RIGHTS**

This is a court authorized notice. This is not a solicitation.

PLEASE READ THIS NOTICE CAREFULLY
THIS COULD AFFECT YOUR LEGAL RIGHTS

1. **YOU MAY HAVE THE RIGHT TO JOIN THIS COLLECTIVE ACTION SUIT**

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named plaintiffs, and to advise you how your rights may be affected by the suit, and to instruct you on the procedure of participating in the suit.

Former employee, ROBERTO MALDONADO, on behalf of himself and all others similarly situated, and HENRY CANALES, BAIRON REYES, ROMEO JUAREZ, JORGE OSEGUEA, MAURICIO A. MENDEZ, MARCIL MENDEZ, and JOSE M. MARTINEZ, (collectively, "plaintiffs") have brought this lawsuit against FASCO ASPHALT PAVING, INC., CHRISTOPHER D'AGOSTINO and STEVE D'AGOSTINO (collectively, "defendants" or "FASCO ASPHALT PAVING"), alleging that they violated the overtime pay provisions of the Fair Labor Standards Act (FLSA). Plaintiffs were employed by FASCO ASPHALT PAVING as laborers and assisted in the mixing of cement and asphalt, paving, and demolition work. The lawsuit seeks back pay and liquidated damages from the defendants, as well as costs and attorney's fees to compensate eligible employees. Defendants deny the allegations made by the plaintiffs, and deny that they are liable to plaintiffs for any back pay, damages, costs or any attorneys' fees sought.

The Judge has not yet decided who is right and who is wrong, but is giving the opportunity to all those employees who are potentially similarly situated to plaintiffs and who might have been affected by these alleged violations to join this collective action suit.

2. COMPOSITION OF CLASS

Plaintiffs seek to sue on behalf of any and all employees who have worked for Fasco Asphalt Paving, Inc, any time within the three years preceding the present date (or who are currently employed there), and who work(ed) in a non-managerial position as a laborer and assisted in the mixing of cement and asphalt, paving, and demolition work

3. YOUR RIGHT TO PARTICIPATE IN THIS SUIT

If you were employed by FASCO ASPHALT PAVING within the last three years, you may join the plaintiffs in this suit (that is, you may “opt-in”) by mailing the “Consent to Join Form” in the enclosed self-addressed stamped envelope to the plaintiffs’ counsel at the following address:

Shulman Kessler LLP
510 Broadhollow Road, Ste. 110
Melville, New York 11474

If you decide to join, you must send the form to plaintiffs’ counsel on or before [60 days from the day of mailing]. After such date, you may not be able to participate in this lawsuit.

However, you may also join this lawsuit and retain counsel of your own choosing. See below Section 6 for more information for retaining counsel of your own choosing.

4. EFFECT OF JOINING THIS SUIT

If you decide to join, you will be bound by the decision of this Court, a jury, or a settlement, whether favorable or unfavorable. If you join the collective action, you may be asked to give testimony and information about your work at FASCO ASPHALT PAVING to help the Court decide if you are owed any money.

By completing and timely returning the Consent to Join form, you are agreeing to have plaintiff, ROBERTO MALDONADO, act as your agent to make decisions on your behalf concerning this lawsuit. These decisions may include the method and manner of conducting the litigation and/or the entering of an agreement with plaintiff’s counsel concerning attorneys’ fees and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative plaintiff will be binding if you join the lawsuit.

Plaintiffs have an agreement with their attorneys that plaintiffs’ counsel are being paid on a contingency fee basis, which means that if there is no recovery, they will not receive any attorneys’ fees. If the plaintiffs prevail or there is a settlement in the matter and there is recovery, the Court will decide the amount of fees to be paid to their attorneys. The Court may

order that attorneys' fees be paid from the money judgment entered in favor of plaintiffs, or that they be paid separately by the defendant, or some combination of the two.

5. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this suit, and agree to be represented by the plaintiffs' attorneys, your counsel in this action will be:

SHULMAN KESSLER LLP
Troy L. Kessler, Esq.
Marijana F. Matura, Esq.
510 Broadhollow Road, Suite 110
Melville, New York 11747
(631) 499-9100

However, you may also join this lawsuit and retain counsel of your own choosing.

6. RIGHT TO RETAIN OTHER COUNSEL

You can join the lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent form by [60 days from the day of mailing] with the Clerk of the Court. The Clerk of the Court's address is:

Clerk of the Court
United States District Court for the Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

7. EFFECT OF NOT JOINING THIS LAWSUIT

If you choose not to join this lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be affected by any judgment or settlement rendered in the lawsuit, whether favorable or unfavorable, and you remain free to file your own lawsuit under the FLSA.

8. COUNSEL FOR DEFENDANTS

The attorneys for the defendants are:

Franklin, Gringer & Cohen, P.C.
Joshua Marcus, Esq.
666 Old Country Road, Suite 202
Garden City, NY 11530
(516) 228-3131

If you decide to join the case, you should not contact the defendants' counsel directly yourself.

9. NO RETALIATION PERMITTED

Federal law prohibits FASCO ASPHALT PAVING, INC., CHRISTOPHER D'AGOSTINO and STEVE D'AGOSTINO from discharging you or in any other manner discriminating against you because you decide to join this lawsuit.

PLEASE DO NOT CONTACT THE JUDGE OR THE CLERK OF THE COURT WITH ANY QUESTIONS ABOUT THIS LAWSUIT.

THIS NOTICE AND CONTENTS HAVE BEEN APPROVED BY THE FEDERAL COURT, HONORABLE MAGISTRATE JUDGE WILLIAM D. WALL.

Dated:

SO ORDERED:

CONSENT TO JOIN COLLECTIVE ACTION

I hereby consent to join the lawsuit known as *Maldonado, et al., v. Fasco Asphalt, Inc., et al.*, to assert claims against the defendants for violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

Signature

Date

Print Name

Telephone Number

Street Address / Apt. No.

E-mail

City, State and Zip Code

CHOICE OF LEGAL COUNSEL & DELIVERY INSTRUCTIONS

Please check ONE of the following options and return this Form to either Shulman Kessler LLP, if you choose to designate them as your attorneys, or the Clerk of the Court, if you wish to proceed with alternative counsel of your own choosing.

☐ I hereby designate the law firm of Shulman Kessler LLP as my attorneys. I will return this form to the following address:

Shulman Kessler LLP
510 Broadhollow Road, Ste 110
Melville, NY 11747

☐ I wish to proceed with alternative counsel of my choosing, or on my own. I will return this form to the following address:

Clerk of the Court
United States District Court for the Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

THE LAST DAY TO FILE THIS CONSENT TO JOIN FORM IS [60 DAYS FROM MAILING].